

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JERRY MEDLIN

Claimant

VS.

**DOUGLAS COUNTY PUBLIC WORKS
TRANSPORTATION**

Respondent,
Self-Insured

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Docket No. 220,524

ORDER

This proceeding is now before the Appeals Board pursuant to the order for remand set forth in the Court of Appeals' June 9, 2000 decision.

ISSUES

This is a claim for a November 6, 1996 accident and resulting back injury. In its April 22, 1999 Order, the Appeals Board concluded that claimant had failed to prove the percentage of work tasks that he lost as a result of the back injury. Therefore, the Board averaged a zero percent task loss with a 65 percent wage loss, which produced a 33 percent permanent partial general disability.

In concluding that claimant had failed to prove task loss, the Appeals Board found that claimant's vocational expert, who was the only vocational expert to testify, did not reduce claimant's former jobs to individual work tasks. The Board also found that the vocational expert had omitted at least one additional job that should also have been analyzed and broken down into individual tasks. After considering the entire record, the Board concluded that claimant had provided a general description of his former jobs but failed to prove the individual tasks that comprised those jobs.

But in its June 9, 2000 decision, the Court of Appeals ruled that the discrepancies between claimant's actual work history and the expert's task analysis were insufficient to make the task list untrustworthy. The Court also ruled that respondent failed to properly challenge the vocational expert's analysis that claimant's former jobs comprised only five work tasks. Therefore, the Court of Appeals remanded this proceeding to the Appeals Board to redetermine the task loss.

The only issues before the Board on this remand are:

1. What is claimant's task loss?
2. After redetermining the task loss, what is claimant's permanent partial general disability rating?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Court of Appeals determined there is uncontroverted evidence that claimant has a substantial task loss because of his November 6, 1996 back injury. The Court of Appeals also determined that the task analysis prepared by claimant's vocational expert, Michael J. Dreiling, was valid and uncontroverted. Therefore, the Board finds that claimant performed a total of five individual work tasks in the 15 years immediately preceding the November 6, 1996 back injury.
2. The Appeals Board adopts Dr. Kenneth L. Wertzberger's opinion that claimant has lost the ability to perform four of the five former work tasks. Therefore, the Board finds that claimant has an 80 percent task loss.
3. Averaging claimant's 65 percent wage loss with the 80 percent task loss yields a 73 percent permanent partial general disability.
4. The Appeals Board adopts the findings and conclusions made in its April 22, 1999 Order that are not inconsistent with the above.

AWARD

WHEREFORE, the Appeals Board modifies its April 22, 1999 Order and awards claimant benefits for a 73 percent permanent partial general disability.

Jerry Medlin is granted compensation from Douglas County Public Works Transportation for a November 6, 1996 accident and resulting disability. Based upon an average weekly wage of \$240, Mr. Medlin is entitled to receive 39 weeks of temporary total disability benefits at \$160.01 per week, or \$6,240.39, plus 285.43 weeks of permanent partial disability benefits at \$160.01 per week, or \$45,671.65, for a 73 percent permanent partial general disability, making a total award of \$51,912.04.

As of November 30, 2000, there would be due and owing to Mr. Medlin 39 weeks of temporary total disability compensation at \$160.01 per week, or \$6,240.39, plus 173.14 weeks of permanent partial general disability compensation at \$160.01 per week, or \$27,704.13, for a total due and owing of \$33,944.52, which is ordered paid in one lump

sum less any amounts previously paid. Thereafter, the remaining balance of \$17,967.52 shall be paid at \$160.01 per week until paid or further order of the Director.

The Appeals Board adopts the remaining orders set forth in its April 22, 1999 Order that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of November 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Eugene C. Riling, Lawrence, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director